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No. 85-1517

In The

Supreme Court of the United States

October Term, 1986

THE STATE OF COLORADO,

Petitioner,

vs.

JOHN LEROY SPRING,

Respondent.

On Certiorari to the Supreme Court of the State of Colorado

REPLY BRIEF

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The respondent has paid the State the subtle compliment of failing to even attempt to refute any of the arguments raised in the Brief for Petitioner. Instead, the respondent has attempted to blunt the significance of the Colorado Supreme Court's holding. The respondent argues that the Colorado Supreme Court did not *require* the police to advise suspects of the subject of interrogation, but simply held that the failure to do so was one factor to consider in the "totality of the circumstances" (Respondent's Brief at 9, 18, 19).

First, on this record, it is clear that the agent's failure to advise the respondent that they would question him

about the Walker homicide was not simply *a* factor in the totality of the circumstances, but the dispositive factor. As it now stands, the law of Colorado is that ignorance of the charges vitiates an otherwise valid waiver of fifth amendment rights. More fundamentally, by denying that the Colorado Supreme Court's holding requires the police to advise a suspect of the subjects about which they propose to question him, the respondent misapprehends the *impact* of the Colorado Supreme Court's opinion. A failure to advise a suspect of the subject of interrogation may jeopardize the admissibility of any statement that he makes. Police officers in the field will no longer know exactly what information must be provided to suspects before a valid waiver may occur. Finally, the respondent's reasoning is fundamentally flawed, because whether or not a suspect has been advised of the subject of interrogation is not even a factor to consider. Logically, the fact that the suspect is not aware that the police know more than he thinks they do is not relevant in determining whether he understands his rights.

The respondent argues that a suspect cannot knowingly and intelligently decide whether he wants counsel, or whether he wishes to exercise his privilege against self incrimination, if he is unaware of the crime about which he is to be interrogated. It is clear from this argument that the respondent equates "knowing and intelligent" with "wise," but neither the Fifth Amendment or this Court has ever required a waiver to be wise. *Oregon v. Elstad*, 470 U.S. 298 (1985). It is "knowing and intelligent" if the suspect understands his rights, and understands that the police can and will use any statements against him.

The state agrees with the respondent that the validity of a waiver of rights pursuant to *Miranda* must be assessed in light of the "totality of the circumstances." *Moran v. Burbine*, 106 S. Ct. 1135 (1986); *see North Carolina v. Butler*, 441 U.S. 369 (1979). However, the respondent parades the phrase "totality of the circumstances" throughout his brief as though it defines the issue of just what evidence is relevant to prove a waiver. The phrase was never meant to *define* relevance, but only to direct reviewing courts to *consider* all relevant evidence in determining the validity of a waiver. *North Carolina v. Butler, supra.*

The only evidence which is relevant is that which tends to prove or disprove that the suspect understood his rights, understood that his statements could and would be used against him, and chose to speak. Thus, under the "totality of the circumstances," the suspect's personal characteristics and background are relevant in determining whether he was able to and did understand his rights. The history of the arrest and station house processing may also be relevant. However, factors which have *no* bearing on the issue of whether he understood his rights are not. The rule that a waiver must be assessed in light of the "totality of the circumstances" does not support the respondent's position.

The respondent is encouraged by *United States v. Washington*, 431 U.S. 181 (1977) and *Fare v. Michael C.*, 442 U.S. 707 (1979), because in both of these cases this court noted in its opinion that the respondent was aware of the nature of the charges under investigation (Respondent's Brief at pp. 15, 16). However, in neither case is there any suggestion that the court regarded this knowl-

edge as anything more than an historical fact. Indeed, the reasoning of the two decisions is antithetical to the extravagant extension of *Miranda* that the respondent urges. For example, in *Washington*, this court stated flatly:

> [M]iranda does not require that any additional warnings be given simply because the suspect is a potential defendant . . ."

431 U.S. at 188. The *Miranda* warnings, without more, provided sufficient information in *Washington* to a suspect who purportedly did not even know that he was a potential defendant. The respondent's reliance on *Washington* and *Fare v. Michael C.* is misplaced.

The respondent argues that the ATF agents "employed deceptive police practices" and "misled" him into waiving his rights involuntarily (Respondent's Brief, p. 25). However, the voluntariness of this waiver was never an issue in the state courts. Although the Colorado Supreme Court's final ruling was expressed in the conventional formula of a "voluntary, knowing and intelligent" waiver of rights, the court discussed in its opinion only whether the waiver was knowing and intelligent. The Colorado Supreme Court never found or noted in passing any "deception" on the part of the federal agents who obtained the respondent's initial statement, and the trial court specifically found that there was none (Petition for Writ of Certiorari at 3-A).

The fact that the police do not tell a suspect all the information known to them is not deceptive. Even if the decision to withhold is deliberate, this is not the kind of deception forbidden by *Miranda*. *Moran v. Burbine, supra; cf. Frazier v. Cupp*, 394 U.S. 731 (1969) (under the pre-

Miranda "old voluntariness standard," an actual misrepresentation that the codefendant had confessed did not render the defendant's confession involuntary). Deception which obscures the meaning of the *Miranda* warnings themselves will violate *Miranda*. *Cf. Edwards v. Arizona*, 451 U.S. 477 (1981) (where the defendant was told that he "had to" talk with the police). However, the police do not violate *Miranda* simply by failing to inform a suspect about matters irrelevant to his understanding of his rights.

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CONCLUSION

Miranda requires that a suspect in custody must be made aware of his rights. It does not require that he be given any information to aid him in assessing the relative gravity of his situation or the wisest course of action under the "totality of the circumstances." The petitioner again requests that the case be reversed.

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